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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1827**

State of Minnesota,
Respondent,

vs.

Andre Deon Woods,
Appellant.

**Filed May 28, 2013
Reversed and remanded
Cleary, Judge**

Ramsey County District Court
File No. 62-CR-12-1788

Lori Swanson, Attorney General, St. Paul, Minnesota; and

John J. Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, F. Richard Gallo, Jr., Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cleary, Presiding Judge; Hooten, Judge; and Huspeni,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

CLEARY, Judge

Appellant pleaded guilty to the offense of simple robbery and received a sentence of a stayed 48-month commitment, ten years of probation, and 160 days in the Ramsey County Correctional Facility (workhouse). On appeal, appellant argues that he is entitled to modification of his sentence or withdrawal of his guilty plea because his plea was induced by a promise regarding his sentence that was not fulfilled. We reverse and remand.

FACTS

In March 2012, appellant was charged with one count of simple robbery due to alleged actions against a female acquaintance. Appellant waived his right to be represented by an attorney in the matter and proceeded pro se.

In May 2012, appellant met with the prosecutor in the case immediately prior to a court hearing, and appellant and the prosecutor reached an agreement that appellant would plead guilty to the charge. The prosecutor filled out a plea petition, and appellant signed the petition. The plea petition states: “If I plead guilty as charged, the prosecutor will agree to a departure from the sentencing guidelines and a sentence of 160 days in the [workhouse].”

At the beginning of the hearing, the district court and appellant discussed the plea agreement.

COURT: . . . I understand there’s been an offer that you’d like to take advantage of. Is that correct?

APPELLANT: Yes, ma’am.

COURT: And tell me what the offer was.

APPELLANT: The offer is 160 days in [the workhouse].

The prosecutor also questioned appellant regarding the plea agreement.

PROSECUTOR: And you understand that the plea agreement is that if you plead guilty as charged I, the State, would agree to a departure from the sentencing guidelines and a sentence of 160 days in the [workhouse]?

APPELLANT: Yes.

PROSECUTOR: Without regard to the fact that otherwise you may on the sentencing guidelines be required to go to prison.

APPELLANT: Yes.

PROSECUTOR: You realize that you—if the Court does not agree this—agree to this arrangement that we’ve made, that you have a right to withdraw your plea[.]

APPELLANT: Yes.

The district court received the plea petition, and the prosecutor questioned appellant regarding the offense. The court then told appellant that it was accepting the guilty plea and adjudicating him guilty, but that its acceptance was conditioned on appellant cooperating with a presentence investigation (PSI), remaining law abiding, and being available for sentencing. The court stated: “If you do those things I’m going to go along with 160 days in the workhouse.” But the court warned: “If you break the law in any way, or don’t cooperate with the PSI, or are not available for sentencing, then I’m not going to go along with it and I’m not going to depart and you’re going to end up in prison.”

A PSI was conducted pending sentencing. The PSI report disclosed that the presumptive guideline sentence for simple robbery for a defendant with appellant’s

criminal history score is a 48-month commitment, and it was recommended that appellant receive such a sentence.

Appellant appeared for sentencing in July 2012. At the beginning of the hearing, the prosecutor said: “The state is asking we do follow the plea agreement which is agreeing to a dispositional departure with 160 days to serve.” The district court then told appellant that, in addition to serving 160 days in the workhouse, he would be on probation for a period of ten years and receive a stayed sentence of a 48-month commitment. When appellant objected that the agreed-upon sentence had been only 160 days in the workhouse, the court responded that probation and a stayed sentence had been part of the plea agreement. Appellant then requested that he be allowed to withdraw his guilty plea, and the court denied that request, stating that the sentence was “consistent with the plea agreement as written on the plea petition.” Appellant received a stayed sentence of a 48-month commitment. He was placed on supervised probation for ten years with various conditions, one of which was to serve 160 days in the workhouse. This appeal follows.

D E C I S I O N

Appellant disputes the district court’s interpretation of the plea agreement. The interpretation and enforcement of a plea agreement present issues of law that are reviewed de novo. *State v. Jumping Eagle*, 620 N.W.2d 42, 43 (Minn. 2000). Appellant states that his understanding of the plea agreement was that, if he pleaded guilty to the charge of simple robbery, he would receive a sentence of 160 days in the workhouse, with no stayed sentence or probation. On appeal, the state did not file a brief and, by

letter to the court, agrees with appellant that he should be resentenced to 160 days in the workhouse. The district court apparently believed that the parties had agreed that appellant would receive the guideline sentence of 48 months, but that there would be a dispositional departure from the guidelines and appellant's commitment would be stayed for probation and 160 days in the workhouse. The court's interpretation of the plea agreement is not supported by the record. The only sentence discussed in the plea agreement and during the plea hearing was 160 days in the workhouse. Nowhere in the plea agreement or transcript from the plea hearing is stay of execution, stayed commitment, or probation mentioned.

Appellant and the state maintain that appellant should be resentenced to 160 days in the workhouse. But the Minnesota Supreme Court has stated that, under the separation-of-powers doctrine, "the final disposition of a criminal case is ultimately a matter for the judiciary." *Johnson v. State*, 641 N.W.2d 912, 917 (Minn. 2002).

In the context of plea agreements, the separation of powers doctrine gives the state the authority to enter into plea agreements with a defendant. However, a district court may, in its discretion, refuse to accept a plea agreement and is not bound by a plea agreement as to any sentence to be imposed.

Id. at 917–18 (citation omitted). Thus, the district court was not bound to impose the sentence that the parties had agreed upon. It may be that the court would have refused to accept the plea agreement if it had understood that the agreed-upon sentence was only 160 days in the workhouse. We therefore decline to require that appellant be resentenced in accordance with the parties' agreement.

In the alternative, appellant argues that he should be allowed to withdraw his guilty plea. “At any time the court must allow a defendant to withdraw a guilty plea upon a timely motion and proof to the satisfaction of the court that withdrawal is necessary to correct a manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1. A district court has “broad discretion” to decide whether to permit withdrawal of a guilty plea, and such a decision should be reversed on appeal “only if it can fairly be concluded that the district court abused its discretion.” *Barragan v. State*, 583 N.W.2d 571, 572 (Minn. 1998).

“Allowing the government to breach a promise that induced a guilty plea violates due process.” *State v. Brown*, 606 N.W.2d 670, 674 (Minn. 2000) (quotation omitted); *see also Santobello v. New York*, 404 U.S. 257, 262, 92 S. Ct. 495, 499 (1971) (“[W]hen a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled.”). “[A]n unqualified promise which is part of a plea arrangement must be honored or else the guilty plea may be withdrawn.” *Kochevar v. State*, 281 N.W.2d 680, 687 (Minn. 1979). If a district court rejects an agreement as to the defendant’s sentence, rather than just a recommendation as to the sentence, then the defendant is entitled to withdraw the guilty plea. *Perkins v. State*, 559 N.W.2d 678, 687 (Minn. 1997); *see also State v. Kealy*, 319 N.W.2d 25, 25–26 (Minn. 1982) (holding that a defendant was entitled to withdraw his guilty plea when the plea petition stated that he would receive a stay of imposition and would have an absolute right to withdraw his plea if the district court did not approve the plea agreement, and the court refused to approve a stay of imposition); *State v. Kunshier*, 410 N.W.2d 377, 379–80 (Minn. App. 1987) (holding that

a defendant was entitled to withdraw his guilty plea when he agreed to plead guilty in exchange for a promise of a 54-month sentence, and the district court imposed a longer sentence), *review denied* (Minn. Oct. 21, 1987).

In this case, the plea agreement was not that a sentence of 160 days in the workhouse would merely be recommended to the district court, with the court free to either adopt or reject that recommendation. Rather, it was agreed that appellant would receive a sentence of 160 days in the workhouse in exchange for his guilty plea. The plea petition and the statements of appellant and the prosecutor during the plea hearing reflect this understanding. The prosecutor explained to appellant that, if the court did not go along with the agreement, appellant had the right to withdraw his guilty plea. The court stated that it would accept the agreement and the guilty plea as long as appellant cooperated with the PSI, remained law abiding, and was available for sentencing. There is no allegation that appellant failed to comply with these conditions.

Because the promise that induced appellant's guilty plea was not honored, withdrawal of the plea is necessary to correct a manifest injustice. As an alternative to plea withdrawal, the district court may resentence appellant to 160 days in the workhouse, as agreed upon by the parties.

Reversed and remanded.